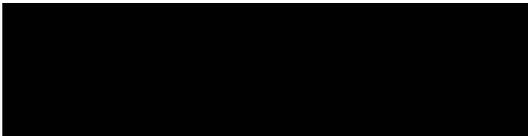


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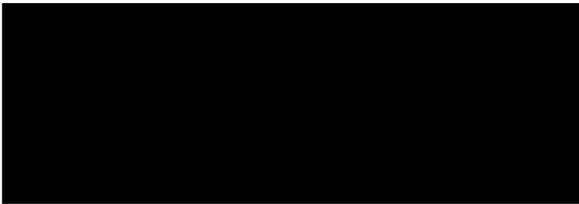
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FILE: [REDACTED] Office: SAN FRANCISCO Date: **MAY 11 2006**

IN RE: [REDACTED]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, San Francisco, California, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 6, 2004.

The record reflects that, on March 1, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. The applicant appeared at Citizenship and Immigration Services' (CIS) San Francisco District Office on November 7, 2002. The applicant testified that, on March 18, 1996, she entered the United States presenting a passport and U.S. visa that were obtained by a tourist agent. The applicant believed that the passport and U.S. visa were legally obtained, however, 5 months after her entry, the tourist agent returned to the applicant a passport that did not contain a U.S. visa or entry stamp. There is no record that the applicant entered the United States legally.

On September 4, 2003, the district director issued a request for further evidence to the applicant informing her of the need to file the Form I-601 with supporting documentation. On December 4, 2003, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the district director erred in finding that the applicant's spouse would not experience extreme hardship upon the applicant's removal from the United States. *Brief In Support of Appeal*, dated July 1, 2004. In support of his contentions, counsel submitted the above-referenced brief, affidavits from the applicant and her spouse, medical documentation in regard to the applicant's spouse and son and psychological reports for the applicant's spouse and son. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that, on October 11, 1998, the applicant married her husband, [REDACTED], who is a U.S. citizen by birth with no ties to the Philippines. The applicant has a 15-year old daughter and a 14-year old son from a previous marriage who became lawful permanent residents of the United States through [REDACTED] and who reside with the applicant and [REDACTED]. The applicant and [REDACTED] have a 7-year old son who is a U.S. citizen by birth and has moderate to severe developmental problems. The record reflects further that the applicant is in her 30's, [REDACTED] is in his 40's and that [REDACTED] has experienced physical and mental problems both currently and in the past.

The district director based the finding of inadmissibility under section 212(a)(6)(C) of the Act on the applicant's admitted use of a fraudulent passport and U.S. visa to procure admission into the United States in 1996. Counsel does not contest the district director's determination of inadmissibility.

Counsel contends that the district director failed to consider the combined effects of the financial and emotional hardships that [REDACTED] faces if his wife were to be removed from the United States or if he accompanied her to the Philippines.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Any hardship suffered by the applicant's two sons or daughter, therefore, is considered only insofar as it results in hardship to a qualifying relative in the application, in this case, the applicant's spouse.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and

significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Supra.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Counsel contends that the applicant's spouse would suffer extreme financial and emotional hardship whether he remained in the United States without the applicant or traveled to the Philippines in order to reside with the applicant. [REDACTED] has been working as a laborer for the City of San Francisco for 16 years. [REDACTED] has a High School education and no foreign language skills. The applicant works in [REDACTED]'s family's restaurant but claims no marketable job skills. [REDACTED] is a recovering alcoholic who has remained sober for the past 14 years through the help of Alcoholics Anonymous and the support of his wife. [REDACTED] also suffers from chronic musculoskeletal pain, specifically in the back area, and psoriasis, for which he receives treatment. [REDACTED] has difficulties caring for his son due to his chronic back pain, which is deteriorating and may eventually lead to a disability. [REDACTED] suffers from a dysthymic disorder, which causes him to be more susceptible to major depressive disorders and exacerbates his ability to remain sober and combat his physical illnesses. *See Psychological Evaluation, Medical Letter and [REDACTED] Affidavit.* Counsel submits medical and psychological letters for the applicant's spouse indicating that "[REDACTED] suffers from chronic lower back pains, wrist pains and ankle and feet pains . . . he has disc disease and restricted back range of motion . . . he requires the chronic and regular use of anti-inflammatory medications and Vicodin narcotic pain medication for pain control." The medical report goes on to indicate that [REDACTED] "had a drug and alcohol dependency problem." The psychological letter indicates that all of [REDACTED] family members have had alcohol dependency issues and "in 1988-89 he [REDACTED] was in the Redwood Center, a residential treatment for alcohol and drug abuse for 28 days . . . for the next year he lived in a half-way house . . . for the first two years he attended Alcoholics Anonymous on a daily basis and for the next 12 years and continuing through today attends meetings two to three times a week." The psychological letter goes on to indicate that if the applicant were to return to the Philippines "[REDACTED] faces a high probability of losing his emotional stability, returning to alcohol and drugs . . . he does not have the emotional or physical skills to care for his pervasively developmentally disabled child alone." The applicant and [REDACTED] son has significant speech and/or learning impairments which are being treated by San Francisco Unified School District. *See Speech and Language Evaluation and Psychiatric Evaluation.* Financial documentation indicates that [REDACTED] earned \$54,822 in 2001. [REDACTED] states that he would be unable to provide the care and attention required for his son to overcome his developmental delay problems if he were to remain in the United States without the applicant. [REDACTED] position with the City requires him to perform emergency overtime without advance notice on a regular basis. [REDACTED] feels that, owing to his health problems and lack of education, he would be unable to obtain alternative employment that would provide him with the healthcare that both he and his son require for their physical and mental illnesses. [REDACTED] has

no family members in the immediate vicinity, who would be able to care for his son and he would be unable to afford professional care when he is required to perform emergency overtime for his job. [REDACTED] is concerned that if he relocated to the Philippines to avoid separation from his wife, he would lose the medical insurance he obtains through his employer, and would find it difficult to obtain sufficient employment to support the family owing to his medical conditions and his lack of education. Moreover, [REDACTED]'s son's condition renders it "necessary for both of his parents to become actively involved with his speech and language development." See *Speech and Language Evaluation*. Counsel contends that the lack of sufficient healthcare in the Philippines will have an extremely detrimental impact on the applicant's spouse who suffers from chronic illnesses and alcohol and drug dependency that are exacerbated by his mental disorder. Mr. [REDACTED] is also deeply concerned that his son would not receive the intervention and therapy that he receives in the United States as a student in the public schools. He is concerned that such services would not be available in the Philippines, or would be an expense he would be unable to afford. There is no documentation of country conditions on the record.

Courts in the Ninth Circuit Court of Appeals have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); see also *Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief . . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

The applicant and her husband are responsible for the care of three children. As relatively uneducated individuals, and, in the applicant's case, unskilled, the couple's prospects for adequate employment in the Philippines are somewhat dim. If he remained in the United States, [REDACTED] would face trying to maintain alone a household with three young children, one of which has significant disabilities without the household assistance and childcare the applicant currently provides, as well as trying to combat his own health and psychological problems which would be exacerbated by the applicant's absence. It would be extremely difficult for [REDACTED] to mitigate the effects of separation by visiting the applicant, due to the cost in relation to his income and family size. In the Philippines, the significant health conditions of the couple's son would most likely suffer, and it is probable that [REDACTED] and the applicant would be unable to adequately provide for their care. Although [REDACTED] is skilled as a laborer, in the Philippines, where wages are generally lower and the unemployment rate is high, these skills would be useless when combined with his health concerns and he and his family could be reduced to abject poverty, compounded by their family size and the applicant and his son's disabilities. The hardship [REDACTED] would face is substantially greater than that which aliens and families upon deportation would normally face. [REDACTED] has no ties to the Philippines and he has significant family ties in the United States, including his U.S. citizen son, his mother and father, and his siblings. A finding of extreme psychological, physical and financial hardship is the inevitable conclusion of the combined force of the submitted medical and psychological letters. A discounting of the extreme hardship [REDACTED] would face in either the United States or the Philippines if his wife were refused admission is, therefore, not appropriate. The AAO therefore finds that the evidence of hardship,

considered in the aggregate and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the fraud or willful misrepresentation for which the applicant seeks a waiver. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's husband if she were refused admission, her otherwise clean background, the significant disability of the applicant's U.S. citizen son and the applicant's lawful permanent resident son and daughter.

The AAO finds that, although the immigration violation committed by the applicant was serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.